

June 6, 2008

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Mitchell L. Rychtanek

Date of Filing: May 14, 2008

Case Number: TFA-0256

This Decision concerns Mitchell L. Rychtanek's Appeal from a determination that the Department of Energy's (DOE) Oak Ridge Office (ORO) issued to him on April 22, 2008. In that determination, the ORO responded to Mr. Rychtanek's request under the Privacy Act (PA), 5 U.S.C. § 552a, as the DOE implemented in 10 C.F.R. Part 1008. This Appeal, if granted, would require the ORO to perform an additional search and either release newly discovered documents or issue a new determination justifying their withholding.

I. Background

Mr. Rychtanek filed a PA request with the Chicago Office for "records in the possession of Argonne National Laboratory (ANL) that may reflect [his] work for subcontractor, N.H. McLennon at ANL between 1965 – 1975." Letter from Miriam R. Legan, Privacy Act Officer, Chicago Office, to Mitchell L. Rychtanek, Apr. 7, 2008. The ORO responded to Mr. Rychtanek's request and sent him copies of his beryllium records and work history report. The ORO did not locate his personnel records. Determination Letter, Apr. 22, 2008.

Mr. Rychtanek then filed the present Appeal with OHA, to "access records of my employment. . . ." Letter from Mitchell L. Rychtanek to OHA, received May 14, 2008. OHA accepted Mr. Rychtanek's Appeal as challenging the adequacy of the ORO's search.

II. Analysis

In responding to a request for information filed under the Freedom of Information Act (FOIA),¹ courts have established that an agency must "conduct[] a search reasonably calculated to uncover all relevant documents. . . ." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search

¹ Unlike the Freedom of Information Act (FOIA), which requires an agency to search all of its records, the Privacy Act requires only that the agency search systems of records. However, we require a search for relevant records under the Privacy Act to be conducted with the same rigor that we require for searches under the FOIA.

reasonably calculated to uncover the sought materials.” *Miller v. Dep’t of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542.

We have not hesitated to remand a case where the search conducted was in fact inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (Aug. 26, 2002) (Case No. VFA-0760) (remanding for a renewed search where DOE’s initial search missed responsive documents that were later found);² *Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (Dec. 13, 1995) (Case No. VFA-0098) (remanding where there was “a reasonable possibility” that responsive documents existed at an unsearched location).

We contacted the Chicago Office and the ORO to request additional information so that we could evaluate their search. The Chicago Office forwarded Mr. Rychtanek’s request to the ANL. The ANL searched its gate passes, human resources, medical, industrial hygiene, and radiological dose records and found no records regarding Mr. Rychtanek.³ E-mail from Kimberly A. Johnson, Manager, Laboratory Records and Publications, ANL, to Miriam R. Legan, Privacy Act Officer, Chicago Office, Apr. 2, 2008.

The Chicago Office then forwarded Mr. Rychtanek’s request to the ORO because an ORO contractor, the Oak Ridge Associated Universities (ORAU), maintains beryllium testing and work history records⁴ for the DOE. The ORAU searched its electronic and paper files by name, social security number, date of birth, and badge number. E-mails from Leah Ann Schmidlin, FOIA/Privacy Act Office, ORO, to David M. Petrush, Attorney-Examiner, OHA, May 21 and 28, 2008. The ORAU located Mr. Rychtanek’s beryllium testing and work history records. The ORO disclosed those records to Mr. Rychtanek with its determination letter.

The ORO stated that the files most likely to have information responsive to Mr. Rychtanek’s request were searched. E-mail from Leah Ann Schmidlin, FOIA/Privacy Act Office, ORO, to David M. Petrush, Attorney-Examiner, OHA, May 21, 2008. We agree. For this reason, we find that the ORO conducted a search that was reasonably calculated to uncover all relevant documents, and was therefore adequate. Therefore, we will deny Mr. Rychtanek’s Appeal.

² OHA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

³ The ANL does not maintain personnel or other employee records from N.H. McLennon or any other sub-contractor. E-mail from Leah Ann Schmidlin, FOIA/Privacy Act Office, ORO, to David M. Petrush, Attorney-Examiner, OHA, May 28, 2008.

⁴ A work history report is a brief listing of data on an employee that includes the employment site, department, dates of employment, job title, badge number, date of birth, and social security number. A personnel file, by contrast, contains the employee’s application, resume, change in employee status, memoranda regarding duty station transfers, performance appraisals, etc. E-mail from Leah Ann Schmidlin, FOIA/Privacy Act Office, ORO, to David M. Petrush, Attorney-Examiner, OHA, May 28, 2008.

It Is Therefore Ordered That:

(1) The Appeal that Mitchell L. Rychtanek filed on May 14, 2008, OHA Case No. TFA-0256, is denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552a(g)(1). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: June 6, 2008